IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.2063 of 2007

Date of Decision: 20.04.2007

M/s Amba Maa Mills ..Petitioner

Vs.

Haryana State Industrial Development Corporation and Anr. ..Respondents

Coram: Hon'ble Mr. Justice Vinod K.Sharma

Present: Mr.Sudhir Sharma, Advocate,
for the petitioner.

Vinod K.Sharma,J. (Oral)

This revision petition has been filed against the order passed by the learned Additional District Judge, Gurgaon allowing an application moved by the defendant-respondents under Order 41 Rule 27 of the Code of Civil Procedure (for short the Code).

A suit filed by the plaintiff for declaration to the effect that the action of the defendants in resuming the plot was illegal, unlawful and for consequential relief of injunction restraining the defendant-respondents from dispossessing the plaintiff from the plot in dispute, was decreed by the

learned trial court.

During the pendency of appeal an application was filed by the defendant-respondents under Order 41 Rule 27 of the Code for seeking permission to lead additional evidence. By way of additional evidence, defendant-respondents wanted to adduce in evidence an agreement executed between the plaintiff and defendants on 25.3.1992 after issuance of allotment letter dated 12.3.1992 which was exhibited as Ex.D.1.

The application was opposed by the petitioner on the plea that the evidence sought to be produced by way of additional evidence should have been produced when the defendants were leading evidence. The stand of the defendant-respondents that the agreement was not traceable was also disputed. It was claimed that the said agreement was within the knowledge of defendants from the very beginning. It was further said that in any case with due diligence it could be found, therefore, application under Order 41 Rule 27 of the Code cannot be allowed.

Learned lower appellate court keeping in view the facts and circumstances of the case has allowed the said application primarily on the ground that documents sought to be produced by way of additional evidence were necessary for just and proper adjudication of the case and the application was allowed subject to payment of Rs.1000/- as costs.

Learned counsel for the petitioner has challenged the said order on the ground that an application under Order 41 Rule 27 of the Code can only be allowed if the ingredients mentioned in the said provisions are fulfilled. In support of his contention learned counsel for the petitioner has placed reliance on the judgment of Hon'ble Supreme Court in the case of **State of Gujarat & Anr. Vs. Mahendra Kumar Parshottambhai Desai**

(D) by L.Rs. AIR 2006 Supreme Court 1864, wherein the Hon'ble Supreme Court was pleased to uphold the order passed by the High Court rejecting the application moved under Order 41 Rule 27 of the Code on the ground that the application was moved to fill in lacunae in the case. The petitioner also placed reliance on the judgment of this Court in the case of **Siri Kishan (deceased by L.Rs.) and others Vs. Sanwal (deceased by L.Rs.) and others AIR 2005 Punjab and Haryana 42.** In the case of **Siri Krishan's case (supra),** this Court was pleased to reject the application under Order 41 Rule 27 of the Code moved for producing excerpts of revenue record which were not tendered by the plaintiff during the trial. This Court recorded a finding that the documents were required to be proved by summoning the witness and in case any witness is summoned at the stage of appeal it would result in great prejudice to the defendant. It was further held that the request for adducing additional evidence cannot be considered at a belated stage. Learned counsel for the petitioner also placed reliance on the judgment of Hon'ble Supreme Court in the case of **Jaipur Development Authority Vs. Smt.Kallashwati Devi JT 1997 (7) S.C. 643** to contend that in order to succeed in application under Order 41 Rule 27 of the Code the party has to satisfy the court that notwithstanding the exercise of due diligence such evidence was not within his knowledge or could not be produced by him in the trial court.

Learned counsel for the petitioner further contended that even in the present case the documents sought to be produced was within the knowledge of the defendant-respondents and therefore, the order passed by the learned lower appellate court cannot be sustained. The contention of the learned counsel for the petitioner cannot be accepted as the provisions of

Order 41 Rule 27 of the Code provide that beside the condition laid above the court can always grant permission to lead additional evidence in case the court finds that the production of such evidence is necessary for the just and proper adjudication of the case. In the present case, learned lower appellate court has held that the document sought to be produced by way of additional evidence was necessary for just and proper adjudication of the case and therefore, the order passed by the learned lower appellate court cannot be said to be against the provisions of Order 41 Rule 27 of the Code as is sought to be contended by the learned counsel for the petitioner.

No merit. Dismissed.

April 20,2007 **(Vinod K.Sharma)**
rp **Judge**